



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 05-111

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

1. Statutory Authority

a. Section 628.10, Stats., provides for suspension of an intermediary’s license for 60 days followed by a revocation if the intermediary has not paid fees by the due date or produced evidence of compliance with continuing education requirements by the due date. Section 628.10 (4), Stats., also indicates that, as a penalty, if a license has been suspended or revoked, when the suspension ends or a new license is issued, the intermediary must pay all fees that would have been payable if the license had not been suspended or revoked, unless the Office of the Commissioner of Insurance (OCI) waives the fee payment.

In contrast, ss. Ins 6.58 (5) (b), 6.63 (4), and 28.04 (1) (g) and (h) provide for revocation of the license rather than a suspension period (although none specify when the revocation will be effective). Also, in contrast, s. Ins 6.63 (5) requires a penalty of double the unpaid renewal fee. Thus, there is no statutory authority to promulgate these provisions.

The analysis essentially acknowledges that there is no statutory authority for these provisions. The fourth paragraph of item 5. of the analysis indicates that the changes relating to revocation and reinstatement depend on passage of an OCI technical bill (which has not yet been introduced) and that if it does not pass, the current system of suspending and revoking licenses in s. 628.10, Stats., would continue. The second paragraph of item 5. of the analysis indicates that if an OCI technical bill is not enacted, these proposed changes would have to be modified and that this would be done before the rule is sent to the Legislature.

Section 227.11 (2) (d), Stats., permits an agency to promulgate rules implementing or interpreting a statute that it will enforce or administer *after the publication of the statute* but prior to the statute's effective date. However, in this case, no statute has been enacted, much less published, that is consistent with the rule's provisions.

The Legislative Council Rules Clearinghouse is required to review the statutory authority under which an agency intends to promulgate a proposed rule. [s. 227.15 (2) (a), Stats.] It is not possible for the Clearinghouse to conduct that review based on statutes that have not been enacted.

2. Form, Style and Placement in Administrative Code

a. In the treatment clause and text of SECTION 1, s. Ins 6.57 (2) should be changed to refer to "(2) (intro.)" since that is the only part of s. Ins 6.57 (2) that is being amended. Otherwise, all of s. Ins 6.57 (2) must be reproduced.

b. In the last sentence of s. Ins 6.59 (4) (am), the acronym "NIPR" should be written out. The acronym should not be used unless it is defined. [See s. 1.01 (8), Manual.] Also, in the last sentence, the phrase "would be" should be replaced by the word "is."

c. A title should be inserted for s. Ins 6.63. [See s. 1.05 (1), Manual.]

d. In SECTION 7, it is not necessary to repeat "Ins 6.63" before each entry after the first occurrence. Also, within a subsection, it is only necessary to indicate the paragraph and not repeat the subsection number. A similar comment applies to SECTION 24. Finally, each paragraph introduction should consistently conclude with the phrase "by each licensed individual intermediary-agent is:".

e. Since s. Ins 6.63 is repealed and recreated, it is unclear why a subsection (2) is omitted.

f. SECTION 14 indicates that the Note to ch. Ins 26 is amended. It should refer to the Note following s. Ins 26.10. A similar comment applies to SECTION 26.

g. In s. Ins 28.04 (1) (a), the reference to "s. 6.50 (2) (a)" should be changed to "s. Ins 6.50 (2) (a)." [See s. 1.07 (2), Manual.]

h. In s. Ins 28.04 (2) (c), the last period should not be shown as overstricken. [See s. 1.06 (4), Manual.]

i. In s. Ins 28.06 (6) (a) 16., the acronym "MEWA" should be written out. The acronym should not be used unless it is defined. [See s. 1.01 (8), Manual.]

j. In s. Ins 28.09, the title should be shown with only an initial capital letter. [See s. 1.05 (2) (b), Manual.]

3. Conflict With or Duplication of Existing Rules

a. Section Ins 26.04 (2) (g), (h), and (i) collectively refer to the following lines of authority: Life; Accident & Health; Property; Casualty; and Personal Lines P&C. However, the certification for Appendix 5 to ch. Ins 26 refers to only the first four lines of authority. If Personal Lines P&C is a separate line of authority, then it should be added to Appendix 5. If it is not, then reference to it should be deleted from s. Ins 26.04 (2) (i).

b. SECTION 28 indicates that the changes take effect on the first day of the month following publication; SECTION 29 indicates that the changes take effect on the first day of the third month after publication for small businesses. To make those provisions consistent with each other, SECTION 28 should include the phrase “Except as provided in SECTION 29.”

4. Adequacy of References to Related Statutes, Rules and Forms

a. The notice of public hearing indicates that the proposed order affects “Section Ins 6, Wis. Adm. Code.” However, the proposed order also affects chs. Ins 26 and 28.

b. The initial regulatory flexibility analysis indicates that the types of small businesses affected are insurance agents. Is it possible that small businesses affected could also include continuing education program providers who are affected by the proposed order, for example, by requiring in s. Ins 28.07 (2) that they report to OCI on course attendance within seven days of a course instead of within 30 days?

c. In the statutory authority section of the analysis, the reference to s. “601.31 (m)” should be changed to “601.31 (1) (m).”

d. The treatment clause of SECTION 15 refers to “Section Ins 26 Appendix 5.” It should refer to “Chapter Ins 26 Appendix 5.” A similar comment applies to SECTION 16.

e. Section Ins 28.04 (1) (f) refers to a reporting date set forth in paragraphs (a) and (b). Similarly, s. Ins 28.04 (1) (g) refers to the reporting date in paragraphs (a) and (b). While there is a reporting date in paragraph (b), there is no reporting date in paragraph (a). Both of these provisions should refer only to paragraph (b). In addition, s. Ins 28.04 (1) (h) should refer to the due date in “par. (b),” not “par. (1) (b).” [See s. 1.07 (2), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the first sentence of item 3. of the analysis, “standards by for” should be changed to “standards for.”

b. The first sentence of item 5. of the analysis indicates that: “These changes attempt to move OCI to the NAIC model standards for licensing producers.” Since this is the first time in the document that “NAIC” is used, the full name should be written out, rather than using the acronym (although it may be followed by parenthetical reference to the acronym).

c. In the first sentence under “Fee and CE Reporting Changes” under item 5. of the analysis, “agents month” should be changed to “agent’s month.” The new fees should be set forth in the analysis.

d. In item 9. of the analysis, the second occurrence of the word “in” in the first sentence of the second paragraph should be deleted.

e. In the chart in item 5. of the analysis, it is not clear what “Recipients” means since the text refers to agents, not recipients.

f. In the last sentence of the last paragraph of item 11. of the analysis, the final comma should be changed to a period.

g. Section Ins 6.57 (1) provides that the application must be submitted to OCI and entered in the OCI licensing system within 15 days from the date the agent contract is executed or the first insurance application is submitted. First, this is not clear since two possible dates are mentioned. A clause such as “whichever is earlier” or “whichever is later” should be added to explain the deadline. Second, “from the date” is not clear. Was it intended to mean “after the date”? Third, while the applicant has control over when the application is submitted to OCI, it is unclear how the applicant can control when the application is entered in the OCI licensing system in order to comply with this proposed rule.

h. In the second sentence, s. Ins 6.57 (2) (intro.), “to the ~~listed~~” should be changed to “to be ~~listed~~.”

i. Section Ins 6.58 (5) (a) indicates that, at certain intervals, a regulation fee of a specified amount will be sent to each entity at the address that OCI has on file. It appears that this should refer to notice of a regulation fee being due that is sent to each entity. Otherwise, the provision literally indicates that the fee is sent to the entity.

j. In the first sentence of s. Ins 6.59 (4) (am), the comma in “or, ~~for~~” should be deleted. Also, the material that begins after the first semicolon (“payment of the fees...”) is not correctly punctuated and leaves two incomplete phrases. If there was an intention to have this be similar to comparable provisions in the proposed rule, it may be that the phrase at the beginning of the current second sentence (A completed application consists of...) should not have been overstricken.

k. In the first sentence of the text of s. Ins 6.59 (4) (as), the inserted comma should be deleted. It does not appear to be preceding the last in a series of three. However, if it is, then a comma should be inserted following “broker,” and the “or” preceding “manager” should be deleted.

l. In s. Ins 6.61 (3) (f), the period following “628” should be changed to a comma. (This should not be shown as an underscored change as the punctuation is correct in the current rule.)

m. In s. Ins 6.63 (1) (a), the phrase “prior to December 31, 2006” should be changed to “on or prior to December 31, 2006” or “prior to January 1, 2007.” If this change is not made, then fees due December 31, 2006 are not accounted for in the rule. Also, the word “a” preceding “OCI” should be replaced by the word “an.”

n. In s. Ins 6.63 (1) (d), the comma following “biennially” should be deleted.

o. In s. Ins 6.63 (4), it appears that the word “biennial” should be deleted as it is not necessary and, moreover, it is not accurate for payments made in 2007 as the fee paid that year is not biennial.

p. In s. Ins 28.04 (1) (b) 1. and 2., it is not clear what the phrase “approved by the commissioner in accordance with this chapter” modifies. It could be interpreted as applying to all of the continuing education courses or only to the ethics courses. If it is the former, then the phrase should be inserted following “continuing education.”

q. Presumably, the credit requirement in sub. (1) (b) 2. covers a three-year period. If so, the rule provision should so state. Finally, the use of the word “must” in both subdivisions should be replaced by the word “shall.”

r. In the last sentence of s. Ins 28.04 (1) (b) 3., “in each even year” should be changed to “in each even numbered year.”

s. The last sentence of s. Ins 28.04 (1) (d) is confusing in that it indicates that courses are counted and banked in the order they are completed. Since the amendment to s. Ins 28.04 (1) (d) repeals the ability to carry forward credits to the following reporting period, it is unclear why a statement is needed about banking the courses.

t. Section Ins 28.08 (2) is confusing in that it explains how many questions are required if a course is for fewer than three credit hours and how many questions are required if a course is for more than three credit hours. However, it does not explain how many questions are required if a course is for exactly three credit hours.

6. Potential Conflicts With, and Comparability to, Related Federal Regulations

Sections Ins 26.05 (5) and 26.07 (2) will require that a continuing education program provider include the applicant’s Social Security number in the information submitted to OCI. It is not clear that this will be consistent with the Federal Privacy Act of 1974 or the Federal Social Security Act which, in general and with exceptions for certain programs, limit the ability of state government to request or require persons to disclose their Social Security numbers as a condition for receipt of any right, benefit, or privilege without certain disclosures. Also, it is noted that s. 628.095 (5), Stats., includes a process for an applicant who does not have a Social Security number.